

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

BRIAN BLANK,

Plaintiff,

vs.

FRANCES BLANK,

Defendant.

Case No. 2000-0836- DM

OPINION AND ORDER

On August 19, 2005, defendant filed a motion to modify the judgment of divorce and change the domicile of the minor child. A hearing was conducted before this Court on June 22, 2006. Defendant testified and Defendant's Exhibits A-B were admitted. In addition to testifying, plaintiff called the following witnesses: Dr. Karen Schulz-Perez, Ph.D. and Robert F. Greene. Plaintiff's Exhibits 1-11 were admitted. After hearing the testimony presented and reviewing the exhibits admitted, the Court makes the following findings as required by MCR 3.210(D).

Findings of Fact

The consent judgment of divorce entered by this Court on September 15, 2000 provided that plaintiff and defendant would share joint legal custody of their son, Maxwell, born February 10, 1995, with physical custody awarded to defendant. Child support was ordered in the amount of \$1,252 per month and has been paid in a timely manner by plaintiff. Plaintiff was further awarded "reasonable and liberal parenting time" with their son.



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The judgment of divorce also provided that plaintiff was to pay spousal support in the amount of \$1,881 per month. The spousal support was to be paid until defendant died, remarried, three months after completing her college education, or until September 1, 2003, whichever occurred first. In addition, plaintiff was required to pay defendant's college education costs, including tuition, books, and fees, up to a maximum amount of \$2,000 per year for three years. Notably, this is the first occasion the parties have returned to this Court since entry of the consent judgment of divorce.

Defendant now seeks the Court's permission to move with the minor child to Rowlett, Texas. She alleges that she has been unable to secure suitable employment and has a good job waiting for her in the Dallas metropolitan area. Plaintiff submits that defendant fails to meet her burden pursuant to MCL 722.31 and that her request for change of domicile should be denied.

Defendant Frances Blank is 49 years old and still resides in the marital home in Troy, Michigan. She grew up in Texas and her parents Noreen and Lloyd Reddout (both in their mid-80's) still reside in the Dallas metropolitan area. She has no other family in Texas, but testified she has several friends. Defendant moved to Michigan in 1991 with her husband and has resided here ever since. Last summer was the minor child's first visit to Texas. He was accompanied by defendant.

Plaintiff was born and raised in Grand Rapids, Michigan and is a graduate of Northview High School. He received his Bachelor of Arts from Central Michigan University in 1981. Plaintiff and his brother own their own business, Electrocom Midwest Sales, which distributes electrical supplies to customers in Michigan. His office is located in Madison Heights, Michigan, and plaintiff testified that he earned approximately \$90,000 in 2005. He also provides for all of Max's health care expenses. His immediate family including his sister, brother, and

their respective families make their home in the greater Grand Rapids area. Plaintiff lives approximately three miles away from the minor child and has for the last six years since the divorce. Plaintiff also testified that he covers all of the costs associated with day care and Max's participation in sports.

Defendant testified that she received her Bachelor of General Studies from Oakland University in 2004. Since then she has sought employment through Kelly Services, and registered on line with monster.com and careerbuilders.com. Defendant has not worked outside the home since 1995 and returned to school in 1998. Prior to the birth of their son, defendant worked in commercial property management from 1983-1991 in Texas and California. She also worked outside the home for approximately three years as a legal secretary at a large Detroit law firm.

Defendant testified that she has had little or no success in securing suitable employment in the property management field in the last two years, or for that matter in obtaining any employment. She has been able to meet her financial obligations only as the result of the generosity of her parents who have been paying her mortgage payment, car insurance, and student loan payment. Plaintiff has also voluntarily assisted her financially.

Defendant did testify that she had recently interviewed for a residential property management position, but had declined to return for a second interview. Defendant cited the low pay of \$30,000 - \$35,000, the distance from her home (40 miles), and the fact that she would be supervised by a close female friend of plaintiff's. The only reason this Court will accept for failing to take a second interview for this particular position in Novi is that she would have been directly supervised by a woman plaintiff is currently dating. Defendant even testified that she casually dismissed potential employment at Target, because she felt it was not convenient for her

and the minor's schedule. Finally, defendant testified that her primary efforts to secure employment have been online and that those efforts have been unsuccessful.

Defendant submits that her only option is to move to Rowlett, Texas for a position as a residential property manager/executive assistant for Charles Blaylock at Charles Blaylock Realtors. Defendant would be responsible for managing approximately 75 residential rental properties. Her compensation would include a salary of \$40,000 a year, plus a car allowance, paid vacation, and access to a profit sharing plan and medical insurance through the Dallas Board of Realtors at her own cost. Mr. Blaylock, age 74, is a close friend of the family. Although it appears to be a very generous offer, given Mr. Blaylock's age, there appears to be little certainty that the position will be available for defendant for any length of time. And given defendant's clear reluctance to enter the work force at any level here in Michigan, how can we hope for any level of success in Texas?

Defendant testified that given the metropolitan Dallas real estate market, she would be able to secure an 1800 square foot brick home at a cost of \$115,000 to \$135,000 for herself and Max. She could use the approximate \$100,000 equity in her current home to substantially reduce her monthly obligation and make the transition into a new home and mortgage. The proposed new school district for Max is the Rockwell School District. Max is currently enrolled at Larson Middle School in the Troy School District. Defendant offered no conclusive evidence that the Rockwell School District meets or exceeds the performance standards of the Troy School District. Defendant admitted that she had not talked to anyone at the school in Rockwell that her son would attend. Obviously, if this Court approved the change of domicile, plaintiff would not be available to assist with day care, yet defendant suggests that she has a number of friends with children Max's age who have agreed to assist her during the school year and during the summer.

Defendant testified that if she did locate full time employment in Michigan, Max would attend the Boys and Girls Club year round for day care.

Plaintiff has always exercised his parenting time, which has included at least one overnight per week and every other weekend. In addition, the testimony was unrefuted that plaintiff is very involved in their son's day-to-day activities, which has included coaching his soccer, basketball, and baseball teams. Plaintiff and son have also vacationed together during spring or winter break. Plaintiff is involved in the minor child's school including attending parent teacher conferences, the book fair, school carnivals, and occasionally lunch period events. Max has his own bedroom at plaintiff's home and has had friends spend the night. Overall, plaintiff testified credibly that he sees Max 10 out of every 14 days.

Both parties agree that the other does very well in parenting – and that if Max leaves Michigan his relationship with his father will suffer. Defendant firmly believes that a move to Texas will help her with her self-esteem, and as a result be good for Max. However, she did testify that if she could find a job in Michigan, it would be in Max's best interests to stay here.

Plaintiff suggests that defendant has made little or no effort to secure any employment, as demonstrated by her failure to work in any position since the divorce. In addition, even online, there appears to be a number of openings for residential property managers which defendant has failed to pursue aggressively. In fact, all the evidence suggests that defendant has had little financial motivation to secure full time employment when others so generously assist her in meeting her obligations.

Defendant also testified that she had not located or spoken to a medical professional in Texas with regard to their son's diagnosis of Attention Deficit Disorder. Dr. Karen Schulz-Perez testified that she met with Max in 1999 and 2000 to help him adjust to the divorce of his parents.

And although she has not seen him since May 2003, he didn't adjust well to the divorce, exhibiting anger, and presenting as anxious and agitated. Generally, because of Max's good relationship with his father, it was her opinion that the move to Texas would be detrimental to Max and detrimental to his relationship with his father.

Finally, defendant very candidly testified that she would not move to Texas and leave Max with his father because she "isn't sure *she could* preserve her relationship at such a distance."

Applicable Law

On January 9, 2001, the Michigan Legislature enacted MCL 722.31, a statutory version of the *D'Onofrio*¹ factors, for trial courts to consider before permitting a legal residence change of more than one hundred miles. *Brown v Loveman*, 260 Mich App 576, 586; 680 NW2d 432 (2004). MCL 722.31(4) provides in pertinent part:

(4) Before permitting a legal residence change . . . , the court shall consider each of the following factors, with the child as the primary focus in the court's deliberations:

(a) Whether the legal residence change has the capacity to improve the quality of life for both the child and the relocating parent.

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

(c) The degree to which the court is satisfied that, if the court permits the legal residence change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent; and whether each parent is likely to comply with the modification.

(d) The extent to which the parent opposing the legal residence change is

¹ The "*D'Onofrio* factors" set out in *D'Onofrio v D'Onofrio*, 144 NJ Super 200, 206-207; 365 A2d 27 (1976) were adopted by Michigan courts in *Dick v Dick*, 147 Mich App 513, 517; 383 NW2d 240 (1985).

motivated by a desire to secure a financial advantage with respect to a support obligation.

(e) Domestic violence, regardless of whether the violence was directed against or witnessed by the child. [*Brown, id.* at 586-587.]

The moving party has the burden of establishing by a preponderance of the evidence that the change in domicile is warranted. *Mogle v Scriver*, 241 Mich App 192, 203; 614 NW2d 696 (2000).

Analysis

Here, the parties have stipulated that factors (d) and (e) are not applicable, and the record is bereft of any evidence to warrant consideration of those two factors. Accordingly, the Court will turn its focus solely on factors (a)-(c).

With regard to factor (a), the record demonstrates that defendant has one prospective job available to her in Texas. The Court recognizes that defendant's employment would be in her own best interests. Further, but to a lesser extent, it would also be in Max's best interest if defendant's self-esteem and financial outlook improve. However, while defendant's attempts to find work in Michigan have been unsuccessful, defendant is far from having exhausted her options within this state. Defendant's refusal of at least two prospective jobs, for plausible if not necessarily justifiable reasons, shows that she is not unable to find employment in this state. If defendant is more flexible in her job search, and if she recognizes that not every job need be ideal, the Court believes she has a good chance of securing gainful employment. That said, defendant's acknowledgement that it would be in Max's best interest to stay in Michigan if she can find a job here is persuasive.

Moreover, any financial improvement to be gained by moving to Texas is purely speculative at this point. Given Charles Blaylock's age, there is a risk that defendant would

move to Texas and begin employment at Charles Blaylock Realtors but only be employed by his company for a few years. The fact that defendant has not been particularly proactive in finding work in Michigan suggests that she might run into similar problems in Texas if her position with Charles Blaylock Realtors ends.

Even assuming that the position with Charles Blaylock Realtors is secure for the next seven years, the Court is not convinced that a move to Texas would necessarily improve defendant's finances. Defendant has offered to pay for all of Max's trips back and forth between Texas and Michigan. However, the cost of paying for Max's airfare from Dallas to Detroit, at a minimum on a monthly basis, would place a considerable strain on defendant's budget. Even splitting the transportation cost might not necessarily be within defendant's means.

As noted above, defendant suggests that if she is allowed to move, she would be able to sell her current home and apply the equity towards a comparable but considerably less expensive home in Texas. However, defendant has apparently made no attempts so far to find a comparable but less expensive home in Michigan. The Court is not convinced that it is necessary for defendant to move to Texas in order to lower her mortgage payment while providing Max with an optimal neighborhood and school district.

Incidentally, the benefits which plaintiff currently provides for defendant could also be reduced if defendant were to move. Defendant acknowledges that she would no longer rely on plaintiff for healthcare coverage, and would pay at least half of her healthcare premiums under a program offered by the Dallas Board of Realtors. In addition, plaintiff's child support payments would be reduced in proportion to defendant's increased income. For all these reasons, the Court is not convinced that defendant's proposed move would necessarily improve her financial outlook.

Non-economic considerations also suggest that moving to Texas would not be in Max's best interests. For one thing, Max is presently involved in various sports programs during the summer. If Max moved to Texas, he would no longer be eligible to participate in sports organized by the City of Troy, since he would not qualify as a resident of that city. Further, Max's involvement in other summer sports would be limited to the extent that tryouts for many teams occur prior to the close of the school year, and Max would not arrive in Michigan until his school year in Texas is completed. The same would likely hold true in Texas, and Max might be precluded from joining school teams if he is in Michigan when tryouts for fall sports are taking place.

Next, defendant candidly acknowledged that she has not spoken with any of the faculty or administration of the Rockwell School District in Texas. Likewise, defendant has not proffered any evidence that the Rockwell School District is superior or even roughly equivalent to the Troy School District in which Max is currently enrolled. Therefore, there has been no showing that changing schools is in Max's best interest.

Furthermore, the testimony is uncontroverted that Max has an excellent relationship with plaintiff, and that plaintiff is heavily involved in Max's life. This relationship provides Max with an excellent role model. It is extremely unlikely that anyone else could assume a role equivalent to the one that plaintiff presently plays in Max's life. Moreover, given Max's psychological history, Dr. Schulz-Perez testified credibly that Max's mental health could be negatively impacted if his current relationship with his father is curtailed. Lastly, defendant herself agrees that plaintiff's continued involvement in Max's life is in Max's best interest.

Based on the foregoing, the Court is convinced there is an insufficient showing that a change in legal residence would improve the quality of life for both the child and defendant.

With regard to factor (b), the record shows that plaintiff has exercised regular and consistent parenting time with the minor child, and that defendant has been cooperative and has not interfered with plaintiff's parenting time. Accordingly, the Court is persuaded there is no showing of intent to frustrate parenting time.

With regard to factor (c), the record indicates it is likely that a modified parenting time schedule would be complied with by both parties, given their history of cooperation. However, Max would be moving hundreds of miles away from plaintiff, and as such, plaintiff's parenting time would be drastically reduced and modified to occur only during school breaks. Defendant suggests that if she and Max were allowed to leave Michigan, she would agree to parenting time that would include at least one weekend a month in Michigan for Max, and every school break to include Thanksgiving, Christmas, winter or spring break, and the entire summer break. And although the days may equal or slightly exceed the number of overnights plaintiff has now, the Court believes the number of overnights alone could not compensate for the year round involvement of both parents that Max currently enjoys. The parties agree that plaintiff currently sees Max approximately 10 out of every 14 days. Plaintiff is significantly involved in Max's education, sports and other activities. Frankly, no number of overnight visits could substitute for his almost day-to-day involvement. Even defendant acknowledges that if Max leaves Michigan his relationship with his father will suffer. Accordingly, the Court is not satisfied that a parenting time can be arranged to preserve and foster the relationship between plaintiff and his son.

Upon careful review of the record, it is clear to the Court that both plaintiff and defendant equally care about the welfare of their son. The involvement of both parties in their child's life is impressive. While the current dispute has likely caused some strain on the parties, the Court implores both parents to maintain their exceptional level of cooperation in raising Max.

Having considered the factors outlined in MCL 722.31, the Court believes that defendant's motion must be denied. Defendant's testimony that she could not preserve her relationship with Max if she were to move to Texas without him is particularly telling. Therefore, in light of the proofs presented, the Court is convinced that the evidence does not show by a preponderance that a change in domicile is warranted. *Mogle*.

In conclusion, defendant's motion to modify the judgment of divorce and change the domicile of the minor child is DENIED. In accordance with MCR 2.602(A)(3), the Court states this case remains closed.

IT IS SO ORDERED.

Tracey A. Yokich
Circuit Judge

TRACEY A. YOKICH
CIRCUIT JUDGE

DATED: July 13, 2006

JUL 13 2006

cc: Connie Kelley, *Attorney for plaintiff*
Jacob Femminineo, Jr., *Attorney for defendant*

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CARMELLA SABAUGH, COUNTY CLERK
BY: K. B. Johnson Court Clerk